

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

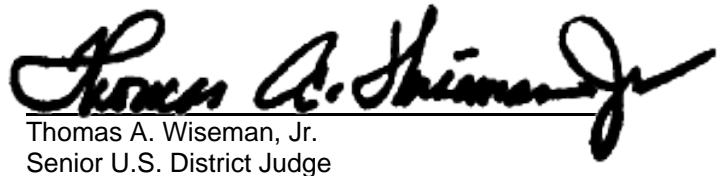
S&M BRANDS, INC. and)
INTERNATIONAL TOBACCO PARTNERS,)
LTD.,)
Plaintiffs,)
v.) Case No. 3:05-0171
PAUL G. SUMMERS, in his official capacity as) Judge Thomas A. Wiseman, Jr.
Attorney General of the State of Tennessee,)
Defendant.)

ORDER

Before the Court is Defendant Paul G. Summers' Rule 12(b)(6) Motion to Dismiss and Memorandum of Law in support thereof (Doc. Nos. 35 and 36). The previously scheduled oral argument on this motion was cancelled as a result of a scheduling conflict that arose between the parties. However, the matter has been fully briefed and is ripe for consideration and, having reviewed the parties' filings in support of and in opposition to the motion and the entire record herein, the Court has determined that oral argument is not necessary.

For the reasons set forth in the accompanying Memorandum, the Court hereby **GRANTS** Defendant's motion to dismiss counts I and III of the Complaint in their entirety, with prejudice, and likewise **GRANTS** the motion to dismiss Count II of the Complaint with prejudice *except insofar as Count II relates to Plaintiffs' claim that Defendant's alleged retroactive enforcement of the 2004 amendment to the so-called Allocable Share Release provision originally contained in Tenn. Code Ann. § 47-31-103(a)(2)(B)(ii) violates their constitutional rights. The motion to dismiss is **DENIED** as to the issue of retroactivity, and that issue alone is reserved for further proceedings.*

It is so ORDERED.



Thomas A. Wiseman, Jr.
Senior U.S. District Judge